SUPREME COURT OF THE UNITED STATES.

No. 291.

THE UNITED STATES, ON THE RELATION OF JOHN WEBER, PLAINTIFF IN ERROR,

vs.

THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN THE STATE OF IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, district judge of said district, associate judges of said circuit court, on Thursday, the fifth day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth year.

WM. H. BRADLEY, *Clerk.*

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN the State of Iowa. } Petition for mandamus.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the seventeenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, the United States,
2 on relation of John Weber, plaintiff, by James Grant, his attorney, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a petition for a writ of mandamus against the board of supervisors of the county of Lee, in the State of Iowa, defendants; and also at the same time filed a bond for costs in said entitled cause, which said petition and bond are in words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois.

THE UNITED STATES, on the relation John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN the State of Iowa. } Petition for a mandanus

John Weber, who avers that he is a citizen of the State of New York, comes and gives this court to be informed that, on the fifth day of October, A. D. 1864, he recovered, by the judgment and consideration of this court against the county of Lee, a municipal corporation created by and a citizen of the State of Iowa, the sum of eighteen thousand two hundred and seven
3 $\frac{92}{100}$ dollars debt, and damages for interest on certain bonds executed and delivered by the county of Lee, for this purpose of aiding in building certain railroads in the State of Iowa; that said judgment remains unsatisfied, and the county of Lee has no property subject to execution sufficient to satisfy said judgment; that the bonds, for the interest on which said judgment was recovered were issued by the county judge of Lee county, in pursuance of a vote of a majority of the people of said county at an election duly held for that purpose; that by the vote under which said election was held it was provided that, in addition to the usual taxes, an annual tax not exceeding one per cent. in the county valuation was to be levied and collected, and continued from year to year so long as required, to pay the principal and interest on said bonds; that the county judge, after said vote and the result of said election, caused the whole proposition to be entered on the minute-book of said county, and the same from thence had the force and effect of an act of the legislature; that said minute-book is under the control of the defendant hereinafter named, and the plaintiff prays that they may produce a certified copy thereof, and when produced, it may be taken as
a part of this petition; that this relator is the owner and holder of
4 bonds issued under said vote, and for the interest of which he ha

obtained judgment numbered 33, 52, 55, 3, 6, 2, 53, 54, 64, 147, 42, 47, 154 133, 135, 11, 129, 130, 145, 50, 31, 32, 34, 35, 36, 37, 38, 39, 40, 133, 135, 12, 13, 43, 44, 45, 46, 47, 48, 29, 148, 14, 68, 69, 70, 71, 72, 73, 102, 103, 104, 105, 106, 113, 67, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 136, 137, 74, 75, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111; that none of the interest on said bonds, since January, 1859, has been paid; that it was the duty of the county judge, when said bonds were issued, to levy said tax, and of the board of supervisors to levy the same, and to pay the interest on said bonds since the year 1860, when the said board of supervisors was created and the duty of levying taxes imposed on them; that said interest has remained unpaid since July, 1859; that all the ordinary revenues of the county have been applied to other purposes, and the board of supervisors have neglected to levy any tax to pay interest on said bonds, or to pay the principal when due; that your relator has demanded of said board of supervisors that they levy and collect all the taxes required by said vote, and particularly the taxes to pay said judgment, and they have neglected and refused so to do; that the whole amount of bonds issued under said vote of the people was one hundred and fifty thousand dollars each to Keokuk,
5 Fort Des Moines, and Minnesota Railroad Company, and the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company, and the Keokuk and Mount Pleasant and Muscatine Railroad Company, all bearing interest at eight per cent. per annum, making an annual interest thirty-six thousand dollars; that no tax has been levied and no interest paid since January, 1859; that the taxable property of said county is not less than four millions of dollars; that the board of supervisors have wholly neglected their duty in that behalf. Your relator, therefore, prays for a peremptory writ of mandamus against the board of supervisors of Lee county, whom the plaintiff avers are citizens of the State of Iowa, commanding them to levy a specifie tax on the valuation of Lee county not exceeding one per cent. sufficient to pay said judgment, interest, and costs, and the costs of this suit.

JAMES GRANT, *Attorney for Relator.*

STATE OF IOWA, *County of Scott, ss:*

I, Samuel F. Smith, being duly sworn, declare on oath that I am one of plaintiff's attorneys; that I know the judgment above named was recovered,
6 and I believe all the other allegations of said information to be true.

SAMUEL F. SMITH.

Subscribed and sworn to by S. F. Smith before me and in my presence this 13th day of January, A. D. 1865.

Witness my hand and seal notarial the day and year last above written.

[SEAL.] CHASE E. PUTNAM,
Notary Public, Scott County, Iowa.

Indorsed: Filed January 17th, 1865.

WM. H. BRADLEY, *Clk.*

Security for costs.

In the circuit court of the United States for the northern district of Illinois.

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN the State of Iowa.

I, Thomas J. Robinson, of Rock Island, county of Rock Island, and State of Illinois, do hereby enter myself security for costs in this cause, and ac-

knowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

7 Dated this 13th day of January, A. D. 1865.

T. J. ROBINSON.

Indorsed: Filed Jan'y 17th, 1865.

WM. H. BRADLEY, *Clk.*

Petition for mandamus.

On this day, to wit, the twenty-sixth day of January, A. D. 1865, in the December term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN the State of Iowa.

Now comes the relator, by James Grant, esq., his attorney, and upon petition filed herein, and on his motion, it is ordered by the court that an alternative writ of mandamus issue against said defendants, returnable to the next March term of this court.

On this day, to wit, the 27th day of January, A. D. 1865, an alternative writ of mandamus issued out of the office of the clerk of said court

8 in said entitled cause; which said writ, together with the return of the marshal thereon indorsed, is in the words and figures following, to wit:

Circuit court of the United States, northern district of Illinois.

The United States of America to the board of supervisors of Lee county, Iowa, greeting:

Whereas the United States of America, at the relation of John Weber, filed in the circuit court of the United States for the northern district of Illinois on the seventeenth day of January, A. D. eighteen hundred and sixty-five, a petition for a writ of mandamus against the board of supervisors of Lee county, Iowa, which is in the words and figures following, to wit:

Petition for a mandamus.

In the circuit court of the United States for the northern district of Illinois.

THE UNITED STATES, on the relation of John Weber,
vs
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN the State of Iowa.

John Weber, who avers that he is a citizen of the State of New York, comes and gives this court to be informed that on the 5th day of Oc-

9 tober, A. D. 1864, he recovered, by the judgment and consideration of this court against the county of Lee, a municipal corporation created by, and a citizen of the State of Iowa, the sum of eighteen thousand two hundred and seven 92-100 dollars debt and damages for interest on certain bonds executed and delivered by the county of Lee for this purpose, of aiding in building certain railroads in the State of Iowa; that said judgment remains unsatisfied, and the county of Lee has no property subject to execu.

tion sufficient to satisfy said judgment; that the bonds for the interest on which said judgment was recovered were issued by the county judge of Lee county in pursuance of a vote of a majority of the people of said county at an election duly held for that purpose; that by the vote under which said election was held it was provided that in addition to the usual taxes an annual tax not exceeding one per cent. in the county valuation was to be levied and collected and continued from year to year so long as required to pay the principal and interest on said bonds; that the county judge after said vote and the result of said election caused the whole proposition to be entered on the minute-book of said county, and the same from thence had the
10 force and effect of an act of the legislature; that said minute-book is under the control of the defendants hereinafter named, and the plaintiff prays that they may produce a certified copy thereof, and when produced it may be taken as a part of this petition; that this relator is the owner and holder of bonds issued under said vote, and for the interest of which he has obtained judgment, numbered 33, 52, 55, 3, 6, 2, 53, 54, 64, 147, 42, 47, 154, 133, 135, 11, 129, 130, 145, 50, 31, 32, 34, 35, 36, 37, 38, 39, 40, 133, 135, 12, 13, 43, 44, 45, 46, 47, 48, 49, 148, 14, 68, 69, 70, 71, 72, 73, 102, 103, 104, 105, 106, 113, 67, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 136, 137, 74, 75, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111; that none of the interest on said bonds since January, 1859, has been paid; that it was the duty of the county judge when said bonds were issued to levy said tax, and of the board of supervisors to levy the same, and to pay the interest on said bonds since the year 1860, when the said board of supervisors was created and the duty of levying taxes imposed on them; that said interest has remained unpaid since July, 1859; that all the ordinary revenues of the county have been applied to other purposes, and the board of
11 supervisors have neglected to levy any tax to pay interest on said bonds, or to pay the principal when due; that your relator has demanded of said board of supervisors that they levy and collect all the taxes required by said vote, and particularly the taxes to pay said judgment, and that they have neglected and refused so to do; that the whole amount of bonds issued under said vote of the people was one hundred and fifty thousand dollars each to Keokuk, Fort Des Moines, and Minnesota Railroad Company, and the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company, and the Keokuk and Mount Pleasant and Muscatine Railroad Company, all bearing interest at eight per cent. per annum, making an annual interest thirty-six thousand dollars; that no tax has been levied and no interest paid since Jan'y, 1859; that the taxable property of said county is not less than four millions of dollars; that the board of supervisors have wholly neglected their duty in that behalf.

Your relator therefore prays for a peremptory writ of mandamus against the board of supervisors of Lee county, whom the plaintiff avers are citizens of the State of Iowa, commanding them to levy a specific tax on the valuation of Lee county, not exceeding one per cent., sufficient to pay
12 said judgment, interest and costs, and the costs of this suit.

JAMES GRANT, *Att'y for Relator.*

STATE OF IOWA, *County of Scott, ss:*

I, Samuel F. Smith, being duly sworn, declare on oath that I am one of plaintiff's attorneys; that I know the judgment above named was recovered, and I believe all the other allegations of said information to be true.

SAMUEL F. SMITH.

Subscribed and sworn to by S. F. Smith before me, and in my presence, this 13th day of January, A. D. 1865.

Witness my hand and seal notarial the day and year last above written.

[L. S.] CHASE E. PUTNAM,
Notary Public, Scott County, Iowa.

Indorsed: Filed January 17th, 1865.

WM. H. BRADLEY, *Cl'k.*

Petition for mandamus.

And thereupon on this day, to wit, the twenty-sixth day of January, A. D. 1865, the following order was entered of record in said court in said cause, to wit:

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, IN the State of Iowa.

13 Now comes the relator, by James Grant, esq., his attorney, and upon petition filed herein, and on his motion, it is ordered by the court that an alternative writ of mandamus issue against said defendants, returnable to the next March term of this court.

Now, therefore, these presents are to command you, the board of supervisors of Lee county, Iowa, that you at your next meeting do and perform all the acts and things prayed for in said petition so far as can be done, or to show cause why same should not be done, and the relief prayed for by said relator on this petition should not be granted and enforced. And of this writ, and in what manner this our command shall be executed by you, you are required to make due return unto the justice of this court on the first day of the next term thereof, being the first Monday of March, A. D. 1865, and hereof fail not at your peril.

To the marshal of the district of Iowa, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago, in the district aforesaid, [SEAL.] this 27th day of January, A. D. 1865, and of our independence the 89th.

14 WM. H. BRADLEY, *Clerk.*

Received a writ of which this is a true copy February 6, 1865, and served the same by causing it to be read to William Marshal, president of the board of supervisors of the county of Lee, State of Iowa, on the 7th day of February, 1865, in Lee county, Iowa; also left with William Marshal the original writ of which this is a true copy. At the same time and place I also read a copy of the original writ to William T. Lowry, treasurer of the county of Lee, and State of Iowa, at Fort Madison, Lee county, Iowa, February 9, 1865. I also left with him a true copy of the original writ at the same time and place.

H. M. HOXIE, *U. S. M.*,
By H. FULTON, *Dept.*

Indorsed: Filed February 16, 1865.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the thirty-first day of March, A. D. 1865, came William Marshall by his attorney, and filed in said clerk's office his answer in said entitled cause to the said writ, which said answer is in words and figures following, to wit:

15 THE UNITED STATES, on the relation of John Webber,
vs.
THE BOARD OF SUPERVISORS OF LEE COUNTY, STATE OF Iowa. } Alternative mandamus.

In the circuit court of United States, for the northern division of the State of Illinois.

And now comes William Marshall, on whom this writ was served as president of the board of supervisors of said county of Lee, and for cause why a peremptory writ of mandamus should not issue by said court states and shows the following:

This respondent admits that he is the president of the board of supervisors of said county; that said alternative writ was served upon him, as will appear by said writ; that by the laws of Iowa, said board of supervisors are authorized and required to hold regular sessions on the first Mondays of January, June and September, and on the Monday succeeding any general election in each year; that since the service of said alternative writ there has been no regular session of said board, and there will not be until
16 June session, 1865. Therefore, this respondent states that said board have had no notice of said writ at a regular session, nor can said board as such do any act in the premises as by said writ they are commanded to do until they shall lawfully be in regular session. Nor can this respondent respond as to the action of said board when they may be hereinafter legally convened, and as such empowered to act in the premises. This respondent denies that said coupons and bonds were issued by the county judge in pursuance of a vote of a majority of the people of said county at an election duly held for that purpose. This respondent avers that the supposed election referred to in said petition and mandamus was illegal and void, and conferred no authority on said county judge to issue said bonds, and was so declared and decided by the supreme court of the State of Iowa before the opening of said bonds, and no tax was ever voted to pay said coupons and bonds, at any legal election. Respondent for further cause states and shows that Eli McMillan, and other citizens and taxpayers of said Lee county, commenced their suit in the district court of said county, thereby enjoining the county judge and treasurer and their successors from
17 levying or collecting any tax to pay said interest coupons, which injunction was duly served on said officers; that at the June term of the supreme court, 1863, said injunction was made perpetual, and duly served upon the board of supervisors, and is now in full force. This defendant cannot do the act required by said alternative writ without incurring the penalty of contempt against the decree of the supreme court of the State of Iowa. Respondent here inserts a copy of said injunctions and decree, and makes the same a part of this answer.

STATE OF IOWA, *Lee county.*

In district court of said county, at Fort Madison.

ELI MCMILLAN AND OTHERS
vs.
SAMUEL BOYLES, county judge, and MCFARLAND, county treasurer.

Be it remembered, that among the original papers in said case appear the following parts, to wit:

STATE OF IOWA.

The above petition having been heretofore presented to me, for the allowance of an injunction, and being fully considered, it is ordered that

18 the writ of injunction issue as therein prayed for, the petitioners giving bonds with sureties, to be approved by the clerk of the district court of Lee county, in the sum of ten thousand dollars.

Supreme court room, January 21st, 1858.

GEORGE G. WRIGHT,
Chief Justice Iowa.

STATE OF IOWA, *County of Lee, ss:*

To the sheriff of said county, greeting:

Whereas Eli McMillan, Samuel Boland, George N. Browning, Alexander Linn, E. S. McCollough, Alexander McGreer, William Campbell, Eli Seely, William J. Robinson, Eli Heaton, Samuel Maloy and Absalom Anderson, have obtained the allowance of a writ of injunction against Samuel Boyles, county judge of said county, and Robert McFarland, treasurer and collector of said county, and having filed a bond in pursuance of law; therefore, you are hereby commanded that you enjoin and restrain the said Samuel Boyles and Robert McFarland, or either of them, or any other person by, through, or under them, from collecting a certain tax assessed upon the people of said county of Lee, for the purpose of paying interest on certain railroad
19 bonds issued by said county, and of this writ make due service and return.

Witness my hand and the seal of the district court of said county of Lee, Iowa, at Fort Madison, this 27th day of February, A. D. 1858.

[SEAL.] ERIE J. LEECH, *Clerk D. C.*,
By D. H. LE SEUR, *Deputy.*

STATE OF IOWA, *Lee county, ss:*

Served the within writ on Samuel Boyles, county judge of said county, by reading the same to him on the 27th day of February, 1858. Also served the within writ on Robert McFarland, treasurer and collector of said county, by reading the same to him on the 15th day of March, 1858.

WILLIAM H. LEECH,
Sheriff of Lee County, Iowa,
By H. M. GRIFFITH, *Deputy.*

Sheriff's fees, service, $1 00.
Mileage, 20.

STATE OF IOWA, *Supreme Court:*

At a supreme court begun and holden at the capitol, in the city of Des Moines, on Friday, the 5th day of June, A. D. 1863—present, Hon. Caleb Baldwin, chief justice, Hon. George G. Wright, judge—the following
20 among other proceedings were had, to wit:

ELI MCMILLAN, app't, *vs.* SAMUEL BOYLES, appellee. } Motion to enter decree *nunc pro tunc*, and correct record.

And now comes the appellant and moves the court to correct the judgment of the court heretofore made in this case, and to enter decree herein *nunc pro tunc*, for reasons on file, and the court having heard the same and being now sufficiently advised in the premises, sustain said motion and order that the following decree *nunc pro tunc* be entered, to wit:

Supreme court, Iowa, June term, 1863.

FRIDAY, *June* 5, 1863.

ELI MCMILLAN *et al.*, appellants,
vs.
SAMUEL BOYLES *et al.* } Appeal from Lee county.

And now this cause coming on to be heard, on motion of plaintiff's counsel for correction of the record entry therein, and for a decree nunc pro tunc in accordance with the opinion of the court, and the court having inspected the record and opinion on file, and appellees having failed to respond
21 to said motion, it is hereby ordered, adjudged and decreed that the erroneous record entry made by the clerk by mistake at the time of the oral announcement of judgment in the cause be cancelled and held as void; and that, instead thereof, decree be now entered in accordance with prayer of petition, and the decision of the court as expressed in the opinion on file, to have the same force and effect in law and equity as if properly signed and entered at the time of decision; which decree, by agreement of parties, is as follows, to wit: And now this cause having been successively submitted to the court by counsel on the respective sides thereof, as per written agreement on file and by oral agreements on the part of plaintiffs, and the court having fully inspected the cases as made by plaintiffs and exhibits and references therein, find the same to be true in fact, and that in law said plaintiffs are entitled to the relief for which they pray; therefore ordered and adjudged that the defendants' demurrer be and the same is hereby overruled. And the said defendants having no other matter of defence to answer to plaintiffs' petition, and desire being expressed in
22 writing that a final decree be entered in and by this court, the court, on full examination of the constitution and laws of the State of Iowa bearing upon the subject, consider and adjudge that the bonds mentioned in plaintiffs' petition, with the coupons attached thereto, and all things accompanying them, together with the vote of the county of Lee by which it is claimed they were authorized, and the subscription to said railroad companies of the stocks mentioned in petition, and all other acts and things done in and about the premises by the county judge of Lee county and his predecessors in office, and the levy of the taxes and attempt to collect the same by the treasurer of Lee county, as stated in the petition, are all unauthorized by law and utterly void, and not only without authority of constitution and statute, but in direct contravention and violation thereof and of common principles of justice and right. And the court further finds that plaintiffs, as claimed in their petition, instituted their suit in chancery in the proper district court of Lee county, as claimed before the completion of the election record, and before the expiration of the publication of the notice required by law to be given in case of votes by counties on local subjects, and in full time to apprize the public of their intent to contest the equity of said bonds.

23 And the court also further find that plaintiffs in their said suit raised fully and properly the constitutional and legal questions now settled, and were fully entitled to have them passed upon and decided by this court, but the court, in view of the great magnitude of the questions and interests involved, decided their case as reported in 3d Iowa, upon the legal questions alone, in their favor, and left the constitutional questions for further consideration and adjudication, and they find that the said decision was, by the act of the legislature of Iowa, by legal enactment, rendered inoperative, and that plaintiffs thereby lost all benefit of their litigation against said bonds, which were unconstitutional, but which were supposed by the

legislature to be valid under the constitution, because of the failure of this court to decide the constitutional questions raised, and therefore acts done by the officers of Lee county in contravention of statute law were cured by them. And the court, thus finding and thus ruling, hereby adjudge, order and decree that the proceedings complained of in plaintiffs petition, by which the vote of Lee county was taken, authorizing subscription to the stock of railroad companies, the subscription of stock thereto, the issue of bonds of the county with coupons attached, and all other acts and things done
24 in furtherance of said projects, together with the act or acts of the general assembly of the State of Iowa curing or attempting to cure the same, be held and taken to be null and void to all intents and purposes whatsoever. And it is further ordered, adjudged and decreed by the court that defendants in this case, and their successors in office, and all officers acting by, through or under them, or in any manner by them or any of their authority, be perpetually and forever enjoined and prevented from levying or collecting any tax or taxes within the county of Lee, or upon or from her citizens, for the purpose of paying interest coupons mentioned in plaintiffs' petition, or any part thereof. And it is further ordered, adjudged and decreed that plaintiff have and recover of and from the defendants the costs of this suit, taxed at $, and that execution issue therefor.

This respondent avers that the decree of which the above is believed to be a copy is in full force and binding effect, and avers that the same is operative upon said board of supervisors, and that said board is thereby enjoined from performing the mandate of said alternative writ of mandamus, and respondent thereupon prays said writ may be quashed.

25 WM. MARSHALL,
President of Board of Supervisors of Lee Co., Iowa.
J. C. HALL, *Att'y for Resp't.*

STATE OF IOWA, *Lee county, ss:*

William Marshall, respondent in the foregoing answer, on oath, says that the facts stated in the foregoing answer, so far as stated of his own knowledge, are true; and so far as stated on information, or purporting to be of record, he verily believes to be true.

WM. MARSHALL,
Pres't Board of Lee Co. Supervisors.

Sworn and subscribed to before me, and in my presence, by Wm. Marshall, pres't board of supervisors of Lee co., Iowa, this 25th day of March, 1865.

EVAN MARSHALL, *Justice of the Peace.*

STATE OF IOWA, *County of Lee, ss:*

I, D. H. Le Suer, clerk of the district court in and for said county, hereby certify that Evan Marshall, whose signature appears to the foregoing affi-
davit, was at the date thereof, and still is, an acting justice of the
26 peace in and for said county, duly elected, commissioned and qualified, and as such full faith and credit are due to all his official acts; and I further certify that the signature purporting to be his is genuine.

Witness my hand and seal of office hereto affixed, at Fort Madison, this 27th day of March, A. D. 1865.

[SEAL.] D. H. LE SUER, *Clerk District Court.*

Indorsed: Filed March 31st, 1865.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the eleventh day of April, A. D. 1865, came said relator, by his attorneys, and filed his motion to quash return of said alternative writ of mandamus; which said motion is in the words and figures following to-wit:

Motion to quash the return.

27 Circuit court United States, northern district, Illinois.

UNITED STATES, *ex. rel.* John Weber,
vs.
BOARD OF SUPERVISORS OF LEE COUNTY, IOWA, *et al.* } Mandamus.

And now comes John Weber, relator, and moves the court to quash the return made to the alternative writ of mandamus herein, and for cause assign—

1st. Said return is not made by the parties to whom said writ is directed, and is not made (apparently) on behalf of all of said board of supervisors of Lee county, Iowa.

2. Said return is frivolous and contemptuous, in that it is said it is uncertain and undetermined what said defendants will do thereafter in respect to the commands of said writ.

JAS. GRANT & H. SCOTT HOWELL,
Att'ys for Relator.

Indorsed: Filed April 11, 1865.

WM. H. BRADLEY, *Clk.*

28 On this day, to wit, the eleventh day of April, in the adjourned March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to-wit:

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Lee, in the State of Iowa. } Petition for mandamus.

Now come the parties, by their attorneys, and now come on to be heard the motion of the relator to quash the petition of the defendants to the alternative writ of mandamus issued herein; also, the demurrer of said relator to said return; and after hearing the arguments of counsel, the court, not being sufficiently advised, takes the same under advisement.

On this day, to wit, the 13th day of April, in said March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

29 THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Lee, in the State of Iowa. } Petition for mandamus.

The court having considered, and being now fully advised upon the motion of the relator to quash the return of the defendants to the alternative writ of mandamus herein, overrules the same, and no opinion being given on the demurrer of the said relator to said return, it is by leave of the court withdrawn; and now, on motion, leave is given by the court to amend the information.

Afterwards, to-wit, on the 27th day of May, in the adjourned May term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF Supervisors of Lee county, Iowa.
} Petition for mandamus.

Now comes the relator, by Grant and Smith, his attorneys, and on their motion leave is given him by the court to file an amended information herein; and on further motion of said attorneys, it is ordered by the court that an alternative writ of mandamus issue out of said court, directed to the said defendant, as prayed for in the information, and said amended
30 information herein returnable to the next October term of this court.

On this day, to wit, the *the* 27th day of May, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his amended information in said entitled cause, which said amended information is in words and figures following, to wit:

Amended information for a writ of mandamus.

In the circuit court of the United States, for the northern district of Illinois.

THE UNITED STATES, on the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF LEE COUNTY, IOWA.

John Weber, who avers that he is a citizen of the State of New York, comes and gives this court to be informed that prior to the 5th of October, 1864, he commenced a suit in the circuit court of the United States for the district of Iowa against the county of Lee, which he avers is a municipal corporation created by, and a citizen of, the State of Iowa, upon cer-
31 tain interest coupons for interest on certain bonds issued by the county of Lee for the purpose of building certain railroads; that while said suit was pending in said circuit court for the district of Iowa, the said defendant, the county of Lee, appeared, by counsel, and the judges of said circuit court did cause it to be entered of record that they were interested in said cause, and with the consent of the defendants ordered the said cause to be transferred to the circuit court of the United States for the northern district of Illinois, for reason that said judges of the Iowa circuit court were interested in said cause, and the said defendants did appear by counsel in this court; that said action of the relator against the county of Lee was commenced to recover interest on three classes of bonds issued by authority of the county; that the bonds in each case were for one thousand dollars each, the principal payable in twenty years, numbered from one upwards, and bearing eight per cent. interest, payable half yearly, for which interest warrants or coupons were annexed to each bond; that one class of said bonds was issued to the Keokuk, Fort Des Moines and Minnesota Railroad Company or bearer, another class to the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company or bearer, and the third
32 class to the Keokuk, Mount Pleasant and Muscatine Railroad Company or bearer, all of which roads had a terminus in the county of Lee, and the amount of bonds to each was $150,000; that said bonds did each of them recite that they were issued to use of said railroad company, under authority of a vote of the people of Lee county, Iowa, at an election held September tenth, 1856, authorizing the county judges thereof to make a subscription to one of said railroads, and issue bonds therefor. The following is a copy of one of said bonds:

"$1,000. No. 1. United States of America, county of Lee, eight per cent. railroad subscription bond issued under authority of a vote of the peo-

ple of Lee county, Iowa, at an election held September the tenth, 1856, authorizing the county judge to make to the Keokuk, Fort Des Moines and Minnesota Railroad Co. a subscription of $150,000 to the capital stock of said company, and to issue bonds therefor. Twenty years after date the county of Lee, in the State of Iowa, promises to pay to the Keokuk, Des Moines and Minnesota Railroad Company or bearer, at the Continental Bank, in the city of New York, one thousand dollars for value received, with interest thereon at the rate of eight per cent. per annum, payable semi-
33 annually, at the same place, on the first day of January and the first day of July in each year, on presentation and delivery of the interest coupons hereto attached; and the said county of Lee doth agree and stipulate to and with said railroad company, and whomsoever may become the holder of this obligation, that the stock of the Keokuk, Fort Des Moines and Minnesota Railroad Company subscribed for and issued to said county in exchange for and satisfaction of this obligation, (being one of a series of bonds amounting on the whole to $150,000,) and the dividends arising therefrom and the proceeds of any sale thereof shall be sacredly set apart and preserved for the payment of the interest and redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and that said stock and proceeds thereof shall not be used for any other purpose while said obligation remains unpaid.

"In witness whereof, the county judge of said county of Lee hath hereunto subscribed his name, and caused the corporate seal of said county to be affixed, this first day of January, A. D. 1857.

"[L. S.] (Signed) S. BOYLES, *County Judge.*"

That said bonds were all alike, except the numbers and the names
34 of the railroad companies to which subscription was made; that the vote of the electors of Lee county, under which said bonds were issued, was taken at an election held on the 10th of September, A. D. 1856, and authorized the levy of a specific tax to pay principal and interest on said bonds; that on the 29th day of January, 1857, the general assembly of the State of Iowa passed an act, of which the following is a copy:

"An act to legalize the issue of county and town corporation bonds in the counties of Lee and Davis.

"SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That all votes taken in the counties of Lee and Davis, or in any city or town in Lee and Davis counties, in the form of a joint or several propositions whether said counties, city, or town will aid in the construction of one or more railroads, specifying the amount to be given to each as a joint or several proposition, and the subscriptions made by said county, city, or town, and the bonds of said counties, city, or town issued in pursuance of said votes and subscription, or hereafter to be issued, are hereby declared to be legal and valid; and that all such bonds issued, and hereafter to be issued, in pursuance of such votes and subscriptions, shall be a valid lien upon the taxable property of said county, city, or town.

35 "SEC. 2. That the county judge, city council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds; and said counties, city, or town shall not be allowed to plead in any suit brought to recover the principal or interest of such bonds that the same are usurious, irregular, or invalid in consequence of the informalities cured by this act.

"SEC. 3. That all bonds heretofore issued by Lee and Davis counties for subscriptions to railroads, in pursuance of any vote by the people of said county, city, or town heretofore had, shall be valid and of full legal and binding force and effect, notwithstanding any informality or irregularity in

the submission of the question to a vote of the people, or in taking of the vote authorizing the subscription to such railroad and the issuing of such bonds."

That the plaintiff was and is the holder and owner of bonds referred to in said act, numbered 33, 52, 55, 6, 2, 5, 53, 54, 64, 147, 42, 47, 154, 133, 133, 11, 129, 130, 145, 50, 31, 32, 34, 35, 36, 37, 38, 39, 40, 133, 135, 12, 13, 43, 44, 45, 47, 48, 49, 148, 14, 68, 69, 70, 71, 72, 73, 102, 103, 104, 105, 106, 113, 67, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129,
136, 137, 74, and his said action in this court was for interest coupons
36 on said bonds. That the county of Lee in said action of the plaintiff in this court filed a plea in bar of the plaintiff's right to recover, setting forth in substance that certain parties on the 15th of October, 1856, filed a petition in the district court of Lee county, Iowa, for the purpose of testing the constitutional and legal power of Lee county to take stock in railroads; that the same was appealed to and formally decided in the supreme court of Iowa, and reported in 3 Iowa Reports, page 311. That on the 29th of January, 1857, the legislature of Iowa passed the act above set out in this information; that soon after the same parties filed their petition, (in said Lee district court,) claiming that said law was in contact with the constitution of the State of Iowa; that said petition was demurred to, tried in the court below, appealed to the supreme court, decided by that court, and reported in 6 Iowa, pages 304 and 391. That this cause was carried to the Supreme Court of the United States and dismissed for want of jurisdiction. That on the 28th of July, 1860, the same parties filed in said Lee district court their petition, asking a review of the former cases on the
subject, raising the same questions, constitutional and statute, as in
37 the former cases; that this last cause was tried below, appealed to the supreme court, and decided and reported in the 14 Iowa Reports, page 107, enjoining and restraining the county of Lee from levying and collecting any taxes to pay said bonds or interest; that said last judgment in the Iowa supreme court was a bar to plaintiff's recovery in his suit.

The said answer did not aver what the decisions in the cases in 3 Iowa and 6 Iowa Reports were, but referred to the same, and by them it appeared that the supreme court of Iowa held, in the 1st case, 3 Iowa Reports, that the said vote of September 10, 1856, was irregular, because the proposition to take stock in three roads was made in one proposition, and the right to take stock in each road made to depend upon a majority vote for all; and it also appeared that in cases in 6 Iowa the supreme court of Iowa held that the issue of bonds by said Lee county to assist in building railroads was authorized by the constitution of Iowa, and that the legislature of Iowa had the power
and authority under the said constitution to pass said act of 29 Jan-
38 uary, 1857. The plaintiff demurred to said plea, and such proceedings were had in this court that said demurrer was sustained, and the plaintiff, on the 5 day of October, 1864, recovered judgment for interest on said bonds to the amount of eighteen thousand two hundred and seven $\frac{92}{100}$ dollars and costs; that said judgment remains unsatisfied; that the county of Lee has no property subject to execution out of which to pay said judgment; that the power to levy and collect the tax named in said act of the legislature of Iowa of 29 of Jan'y, 1857, has by a general law of the State of Iowa been transferred from the county judge to the board of supervisors of Lee county, Iowa; that no tax has been levied or collected to pay the interest on said bonds since the year A. D. 1859; that, in addition to said act of 29 of Jan'y, 1857, the general laws of the State of Iowa provides that when a judgment is rendered against a municipal corporation a tax must be levied to pay said judgment; that the relator has demanded of said board of supervisors of Lee county, Iowa, which is the proper au-

39 thority of said county in such case to levy and collect a tax to pay said judgment, and they have neglected and refused so to do; that the taxable property of said county is at least four millions of dollars; that the relator is without any other adequate remedy at law, and he prays of this court a peremptory writ of mandamus under said acts of the legislature of Iowa of 29 January, 1857, commanding the said board of supervisors of Lee county, Iowa, forthwith to levy and collect a tax and pay the said judgment of the relator for the sum of eighteen thousand two hundred and seven $\frac{92}{100}$ dollars interest and costs and the costs of this suit.

JAMES GRANT, *Att'y for Relator.*

STATE OF IOWA, *County of Scott, ss:*

I, James Grant, being duly sworn, do state on oath that I am plaintiff's att'y; that I know the judgment above named was recovered, and all the allegations of said petition are true, as I verily believe.

JAMES GRANT.

Subscribed and sworn to by James Grant, before me and in my presence, this 26th day of May, A. D. 1865.

40 Witness my hand and seal notarial the day and year last above written.

[SEAL.]

SAM'L F. SMITH,
Notary Public, Scott County, Iowa.

Indorsed: Filed May 27th, 1865.

WM. H. BRADLEY, *Cl'k.*

41 On this day, to wit, the 27th day of May, A. D. 1865, an alternative writ of mandamus issued out of said clerk's office in said entitled cause; which said alternative writ, together with the return of the marshal indorsed thereon, is in the words and figures following, to wit:

Circuit court of the United States for the northern district of Illinois.

The United States of America to the board of supervisors of the county of Lee, in the State of Iowa:

Whereas it has been represented to the circuit court of the United States for the northern district of Illinois by an information duly filed on the relation of Jno. Weber, who avers that he is a citizen of the State of New York, comes and gives this court to be informed that prior to the 5 October, 1864, he commenced a suit in the circuit court of the United States for the district of Iowa against the county of Lee, which he avers is a municipal corporation created by and a citizen of the State of Iowa, upon certain interest coupons for interest on certain bonds issued by the county of Lee for the purpose of building certain railroads running into that county; that

42 while said suit was pending in said circuit court for the district of Iowa the said defendant, the county of Lee, appeared, by counsel, and the judges of said circuit court did cause it to be entered of record; that they were interested in said cause, and, with the consent of the defendant, ordered said cause to be transferred to the circuit court of the United States for the northern district of Illinois, for the reason that said judges of the Iowa circuit court were interested in said cause, said cause was so transferred, and said defendant did appear by counsel in this court; that said action of the relator against the county of Lee was commenced to secure interest on three classes of bonds issued by authority of Lee county; that the bonds in each case were for one thousand dollars each, the principal payable

in twenty years, numbered from one upward, and bearing interest at the rate of eight per cent. payable half yearly, for which interest warrants or coupons were annexed to each bond; that one class of said bonds were issued to the Keokuk, Fort Des Moines, and Minnesota Railroad Company, or bearer; another class to the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company, or bearer; and the third class to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, or bearer, all of which roads has a terminus in the county of Lee, and the amount of bonds to each was $150,000; that said bonds did each of them recite that they were issued to one of said railroad companies under authority of a vote of the people of Lee
43 county, Iowa, at an election held September tenth, 1858, authorizing the county judge thereof to make a subscription to one of said railroads, and issue bonds therefor. The following is a copy of one of said bonds:

"$1,000. No. 1. United States of America, State of Iowa, county of Lee, eight per cent. railroad subscription bond, issued under authority of a vote of the people of Lee county, Iowa, at an election held September the tenth, 1856, authorizing the county judge thereof to make to the Keokuk, Fort Des Moines, and Minnesota Railroad Co. a subscription of $150,000 to the capital stock of said company, and to issue bonds therefor. Twenty years after date the county of Lee, in the State of Iowa, promises to pay to the Keokuk, Fort Des Moines, and Minnesota Railroad Company, or bearer, at the Continental Bank, in the city of New York, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum, payable semi-annually, at the same place, on the first day of January and July in each year, on presentation and delivery of the interest coupons hereto attached. And the said county of Lee doth agree and stipulate with the said said railroad company, and whomsoever may become the holder of this obligation, that the stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company, subscribed for and issued to said county in exchange for and satisfaction of this obligation, being one of a series of bonds amounting on the whole to $150,000,
44 and the dividend arising thereupon, and the proceeds of any sale thereof, shall be sacredly set apart and preserved for the payment of the principal of this obligation and other obligations of the series aforesaid of which this constitutes a part; and that said stock and proceeds thereof shall not be used for any other purpose while said obligation remains unpaid.

"In witness whereof, the county judge of said county of Lee hath hereunto subscribed his name, and caused the corporate seal of said county to be affixed, this first day of January, 1857.

"[L. s.] (Signed) S. BOYLES, *County Judge.*"

That said bonds were all alike except the numbers and the names of the railroad companies to which subscription was made; that the vote of the electors of the county under which said bonds were issued was taken at an election held on the 10th of September, 1856, and authorized the levy of a specific tax to pay the principal and interest of said bonds. That on the 29th of January, 1857, the general assembly of the State of Iowa passed an act of which the following is a copy:

"An act to legalize the issue of county and town corporation bonds in the counties of Lee and Davis.

"Section 1. *Be it enacted by the general assembly of the State of Iowa,* That all votes taken in the counties of Lee and Davis, or in any city
45 or town in Lee and Davis counties, in the form of a joint or several proposition whether said counties, city, or town will aid in the con-

struction of one or more railroads, specifying the amount to be given to each as a joint or several proposition, and the subscription made by said county, city, or town, and the bonds of said county, city, or town, issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and valid; and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscriptions shall be a valid lien upon the taxable property of said county, city, or town.

"SEC. 2. That the county judge, city council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city, or town shall not be allowed to plead in any suit brought to recover the principal or interest of such bonds that the same are usurious, irregular, or invalid, in consequence of the informalities cured by this act.

"SEC. 3. That all bonds heretofore issued by Lee and Davis counties, and by any city or town, for subscriptions to railroads in pursuance of any vote by the people of said county, city, or town heretofore had, shall be valid, and of full legal and binding force, notwithstanding any informality or
46 irregularity in the submission of the question to a vote of the people, or in taking of the vote authorizing the subscription to such railroad and the issuing of such bonds."

That the plaintiff was and is the holder of bonds referred to in said act, numbered 33, 52, 55, 6, 25, 53, 54, 64, 147, 42, 47, 154, 133, 135, 11, 129, 130, 145, 50, 31, 32, 34, 35, 36, 37, 38, 39, 40, 133, 135, 12, 13, 43, 44, 45, 47, 48, 49, 148, 14, 68, 69, 70, 71, 72, 73, 102, 103, 104, 105, 106, 113, 67, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 136, 137, 74, and his said action in this court was for interest coupons on said bonds. That the county of Lee in said action of the plaintiff appeared in this court, filed a plea in bar of the plaintiff's right to recover, setting forth in substance that certain parties filed a petition in the district court of Lee county for the purpose of testing the constitutional and legal power of the county to take stock in railroads; that the same was appealed to and finally decided in the supreme court of Iowa, and reported in 3 Iowa Reports, page 311. That on the 29th of January, 1857, the legislature of Iowa passed the act above set forth in this information. That soon after the same parties filed their petition, (in said district court,) claiming that said law was in contact with the constitution of the State of Iowa; that said petition
47 was demurred to, tried in the court below, appealed to the supreme court, decided by that court, and reported in 6 Iowa Reports, pages 304 and 391. That this cause was carried to the Supreme Court of the United States, and dismissed for want of jurisdiction; that on the 28 July, 1860, the same parties filed in said Lee district court their petition, asking a review of the former cases on the subject, raising the same question, constitutional and statute, as in the former cases. That this last cause was tried below, appealed to the supreme court and decided, and reported in the Iowa Reports, page 107, enjoining and restraining the county of Lee from levying and collecting any taxes to pay said bonds or interest. That the said last judgment in the Iowa supreme court was a bar to the plaintiff's recovery in his said suit. The said answer did not aver what the decision in the cases in 3 Iowa and 6 Iowa Reports was, but referred to the same, and by them it appeared that the supreme court of Iowa held in the first case, 3 Iowa Reports, that the vote of September 10, 1856, was irregular, because the proposition to take stock in these roads was made in one proposition, and the right to take stock in each was to depend on a majority vote for all. And it also appeared
48 that in the cases in 6 Iowa Reports the supreme court of Iowa held that the issue of bonds of Lee county to assist in building said roads was authorized by the constitution of Iowa, and that the legislature of Iowa had the

power and authority to pass said act of 29 of January, 1857. The plaintiff demurred to said plea, and such proceedings were had in this court that said demurrer was sustained, and the plaintiff, on the 5th of October, 1864, recovered judgment for interest on said bonds to the amount of eighteen thousand two hundred and seven $\frac{92}{100}$ dollars and costs. That said judgment remains unsatisfied. That the county of Lee has no property subject to execution out of which to pay said judgment. That the power to levy and collect the tax named in said act of 29 January, 1857, has, by a general law of the State of Iowa, been transferred from the county judge to the board of supervisors of Lee co., Iowa. That no tax has been levied or collected to pay the interest on said bonds since the year 1859. That in addition to said act of 29 of January, 1857, the general laws of the State of Iowa provide that where a judgment has been rendered against a municipal corporation, a tax must be levied to pay said judgment. That the relator has demanded of said board of supervisors of Lee county what is the proper
49 authority of said county in said case to levy and collect a tax to pay said judgment, and they have neglected and refused to do so. That the taxable property of said county is at least four millions of dollars. That the relator is without adequate remedy at law.

Now these are to command you, the Board of Supervisors of Lee county, Iowa, that you do forthwith, under the authority of the act of the legislature of Iowa, passed on the 29th of January, 1857, proceed to levy and collect a tax sufficient to pay, and when collected, that you do pay this judgment, recovered in the circuit court of the United States for the northern district of Illinois, in favor of John Weber, for the sum of eighteen thousand two hundred and seven $\frac{92}{100}$ dollars, with interest from the 5 Oct., 1864, and costs, or that you show cause to the contrary to our said circuit court of the northern district of Illinois, to be held at the United States court-room on the 1st day of a term to be held on the 1st Monday of October, 1865; and of this writ, and in what manner you have obeyed the command therein made, you are required to make due return on said day and at said place, and hereof fail not at your peril.

50 To the marshal of the district of Iowa to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme
[SEAL.] Court of the United States of America, at Chicago, in the district aforesaid, and the seal of said circuit court, this 27th day of May, A. D. 1865.

WILLIAM H. BRADLEY, *Clerk.*

Rec. a writ of which this is a true copy June 1, 1865. Served the same on the board of supervisors by reading the original writ to William Marshall, president of the board of supervisors for Lee county, Iowa, on the 5th day of June, 1865, in the town of Fort Madison, Lee county, Iowa. I also served the orrigion writ on the following named persons, members of the board of supervisors for Lee county, Iowa, by reading the writ severally to M. H. Rodgers, D. V. Brown, G. E. Stevens, Elias Overton. For a more full return see schedule attached to this writ marked (A,) and made a part of my return.

(A.) Benj. Cook, J. H. Davis, C. J. Hyde, H. M. Salmon, J. W. Goodrich, V. H. Sullivan, Z. Henkle, W. J. Cochran, Adam Hagney, F. H. Holland,
Robert Reed, all members of the board of supervisors of Lee county,
51 Iowa, on the 5th day of June, 1865, in the town of Fort Madison, Iowa. I also left with each of them a true copy of the original writ at the same time and place. I also served the writ on W. T. Lowry, treasurer of the county of Lee, Iowa, by reading the same to him on the 5th day

of June, 1865, in the town of Fort Madison, Iowa. I also left with him a true copy of the origional writ at the same time and place. I left the original writ, of which this is a true copy, with William Marshal, president of the board of supervisors of Lee county, Iowa, on the 5th day of June, 1865. I also caused a copy of the origional writ to be read to William Werner, one of the board of supervisors of Lee county, Iowa, on the 7th day of June, 1865, in the town of Fort Madison, Iowa; also left with him a true copy at the same time and place.

PETER MELENDY, *U. S. Marshal*,
By H. FULTON, *Dept.*

The above-named members served compose the entire board of supervisors of Lee county, Iowa.

H. FULTON, *Dept.*

Marshal's fees:

Service on 17	$34 00
Miles, 311, at 6 cts. one way	18 66
17 copies, 1,900 words in each, at 10 cts. per 100	32 30
	$84 96

52 Indorsed: Filed June 22, 1865.

WM. H. BRADLEY, *Clerk*.

On this day, to wit, the third day of October, A. D. 1865, the defendant, by its attorney, came and filed in said clerk's office its answer in said entitled cause, which said answer is in the words and figures following, to wit:

53 THE STATE OF IOWA, *County of Lee, ss:*

At a special meeting of the board of supervisors of Lee county, Iowa, held at the court-house in Fort Madison, on the 30th day of September, A. D. 1865, the following proceedings were had, to wit:

SATURDAY, *September* 30, A. D. 1865.

The board of supervisors of Lee county, Iowa, met in special session in pursuance of the following call, to wit:

To D. H. Le Seur, clerk district court, and *ex officio* clerk board of supervisors of Lee county, Iowa:

SIR: We, the undersigned, members of the board of supervisors of Lee county, Iowa, desire that you call a special meeting of said board, to be held at the court-house in Fort Madison, in said county, on Saturday, September 30, A. D. 1865, commencing at one o'clock p. m. of said day, for the purpose of deliberating in regard to the defence of Lee county against railroad bond suits.

September 15, 1865.

54 (Signed)

William Marshal,	J. A. Davis,
Elias Overton,	J. W. Goodrich,
Chas. J. Hyde,	F. H. Holland,
D. T. Brown,	Z. Henkle,
Geo. E. Stevenson,	B. Cook,
Wm. Werner,	H. M. Salmon.

Wm. Marshall, esq., the president, called the board to order, and the roll being called by the clerk, all of the foregoing named supervisors answered to their names.

Supervisor Stevenson offered the following resolution, which was, on mo-

tion, adopted unanimously, to wit: "Resolved, that the two writs of alternative mandamus served upon this board on the relation of John Weber and J. Edgar Thompson, from the circuit court of the United States for the northern district of Illinois, be referred to a select committee of three, with instructions to report to this board, the proper answer to be returned to said writ to said court."

Thereupon the president appointed the following supervisors as said committee, to wit: Messrs. Geo. E. Stevenson, D. T. Brown and J. A. Davis, who afterwards presented their report, which, upon motion, was accepted and unanimously adopted, to wit:

55 "The committee to whom was referred the alternative writ of mandamas issued to the board of supervisors of Lee county, by the hon circuit court of the United States for the northern district of the State of Illinois, on the relation of John Weber, commanding this board to levy a tax not exceeding one per cent. on the valuation of property subject to taxation in said county, and apply the same to pay four hundred and fifty bonds and coupons of said county issued as in said writ stated, and to pay or cause to be paid to said relator three certain judgments and costs as in said writ stated, and also to rescind a certain order of this board made on the day of , refusing to levy taxes for said purposes, &c., now report: That your committee have had said subject under consideration, and they say that as a cause why this board should not levy a tax for the purpose thus alternatively directed in the said writ, that the board is under an injunction issued by the supreme court of the State of Iowa, at the suit of Eli McMillan and others, citizens and taxpayers of said county of Lee, thereby enjoining this board from levying any tax to pay said bonds and coupons and judgments referred to in said writ, and that, as they are

56 advised by their counsel, this board *and* believe that by the laws of the State of Iowa, if this board should obey said writ of mandamus and levy said tax, that each member of this board would incur and be subject to a penalty for contempt in disobeying said injunction, and would incur such penalty. Therefore, this board cannot obey said writ of mandamus without violating a plain duty made imperative upon them by said injunction.

"This committee hereto attach a copy of said injunction so served upon the board, and make the same a part of this report.

"The committee recommend that the facts above stated, and the copy of said injunction as herein set forth as a cause why this board have not levied the tax as herein alternatively directed, and pray the court to be discharged from further judgment and that said writ may be quashed.

"GEO. E. STEVENSON,
"D. T. BROWN,
"J. A. DAVIS,
"*Committee.*"

And afterwards, on the same day, the following record entry was made, to wit:

57 "The committee heretofore on this day appointed by this board, and to whom was referred the alternative writ of mandamus issued, on the relation of John Weber, by the circuit court of the United States for the northern district of Illinois, having made their report to this board, and the same being before this board for their consideration—

"It is now here by this board ordered that no tax be levied for the purpose required in said alternative writ, and that this board adopt said report as a cause why a peremptory writ should not issue, with prayer of this board that said writ may be quashed."

THE STATE OF IOWA, *ss:*

To Samuel Boyles, county judge of Lee county, State of Iowa, and his successors in office, and all acting by, through, or under them, or any of their authority, greeting:

Whereas, at the June term of the supreme court of the State of Iowa, begun and held at the capitol, in the city of Des Moines, on the 5th day of June, A. D. 1863, an order and decree was made, in words and figures,
58 to wit:

ELI MCMILLAN *et al.*
vs.
SAMUEL BOYLES, co. judge, *et al.* } Appeal from Lee county court.

And now this cause coming on to be heard, on motion of plaintiff's counsel, for correction of record entry herein, and for a decree *nunc pro tunc* in accordance with the opinion of the court, and the court having inspected the record and opinion on file, and appellee having failed to respond to said motion, it is hereby ordered, adjudged and decreed that the erroneous record entry made by the clerk by mistake at the time of the oral announcement of judgment in the cause be cancelled, and held as void, and that instead thereof decree be now entered in accordance with the prayer of petition, and the decision of the court, as expressed in the opinion on file, to have the same force and effect in law and equity as if properly signed and entered at the time of decision, which decree, by agreement of parties, is as follows, to wit:

And now the cause having been fully submitted to the court by counsel on the respective sides thereof as per written agreement on file, and by oral arguments on the part of plaintiff, and the court having fully in-
59 spected the case as made by plaintiff, and exhibits and references therein, said the same to be true in fact, and that in law said plaintiffs are entitled to the relief for which they pray: therefore, order and adjudge that defendant's demurrer be, and the same is hereby, overruled; and the said defendants having no other matter of defence to answer to plaintiff's petition, and desire being expressed in writing that a final decree be entered by this court, and the court, on full examination of the constitution and laws of the State of Iowa bearing upon the subject, consider and ajudge that the bonds mentioned in plaintiff's petition, with the coupons attached thereto, and all things accompanying them, together with the vote of the county of Lee, by which it is claimed they were authorized, and the subscription to said railroad companies of the stocks mentioned in the petition, and all other acts and things done in and about the premises by the county judge of Lee county, and his predecessors in office, and the levy of the taxes and attempt to collect the same by the treasurer of Lee county, as stated in the petition, are all unauthorized by law and utterly void, and not
60 only without authority of constitution and statutes, but in direct contravention and violation thereof, and of common principles of justice and right.

And the court further find that plaintiffs, as claimed in their petition, instituted their suit in chancery in the proper district court of the county, as claimed, before the completion of the election record, and before the expiration of the publication of the notice required by law to be given in case of votes by counties or local subjects, and in full time to apprise the public of their interests to contest the equity of said bonds.

And the court also further find that the plaintiff, in their said suit, raised fully and properly the constitutional and legal questions now settled, and were fully entitled to have them passed upon and decided by the court.

But the court, in view of the great magnitude of the questions and interests involved, decided their case, as reported in 3d Iowa, upon the legal questions alone, in their favor, and left the constitutional questions for further consideration and adjudication; and they find that the said decision was, by
act of the legislature of Iowa, by legal enactment, rendered in-
61 operative, and the plaintiff thereby lost all benefits of their litigation against said bonds, which were unconstitutional, but which were supposed by the legislature to be valid under the constitution because of the failure of this court to decide the constitutional questions raised, and, therefore, acts done by the officers of Lee county in contravention of statute law were cured by them. And the court thus finding and thus ruling, hereby adjudge, order and decree that the proceedings complained of in plaintiff's petition, by which the vote of Lee county was taken, authorizing subscription to the stock of railroad companies, the subscription of stock thereto, the issue of bonds of the county with coupons attached, and all other acts and things done in furtherance of said project, together with the act or acts of the general assembly of the State of Iowa, curing or attempting to cure the same, be held and taken to be null and void, to all intents and purposes whatever.

And it is further ordered, adjudged and decreed by this court, that defendants in this case, and their successors in office, and all officers act-
62 ing by, through, or under them, or in any manner by them, or any of their authority, be perpetually and forever enjoined and prevented from levying or collecting any tax or taxes within the county of Lee upon or from her citizens for the purpose of paying interest coupons or bonds mentioned in plaintiff's petition, or any part thereof. And hereof fail not, at your peril.

In witness whereof, I have hereunto affixed my name and the seal of our said court.

Done at the city of Des Moines this 7th day of July, 1864.

[L. S.] LEWIS KINSEY, *Clerk.*

This writ of injunction came into my hands July the 15th, 1864, and on the same day I hereby certify that I served the same by reading to H. M. Salmon, president of the board of supervisors of Lee county, Iowa; R. A. Russell, county judge, Lee county, Iowa; Charles Doer, clerk of the board of supervisors of Lee county, Iowa; Wm. T. Lowery, recorder and treasurer of Lee county, Iowa, and also by delivering to each of them personally a true copy of the within writ, in Madison township, Lee county, Iowa.

ISRAEL ANDERSON,
Sh'ff of Lee Co., Iowa.
By JOHN G. KENNEDY, *Deputy.*

Sh'ff's fees : Service	4	00
Copies	6	00
Mileage		40
Total	10	40

63 THE STATE OF IOWA, *County of Lee, ss:*

I, D. H. Le Suer, clerk of the district court, and ex officio clerk of the board of supervisors of Lee county, Iowa, do hereby certify that the foregoing pages, numbered from one to four, inclusive, are true and perfect copies of the proceedings of the board of supervisors of said Lee county, had at their special meeting held at the court-house in Fort Madison, on the 30th day of September, A. D. 1865, as fully as the same appears of record in my office.

And that the paper hereto attached is a true copy of the writ of injunction issued from the supreme court of the State of Iowa, which was directed by said board to be made a part of the proceedings thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at Fort Madison, in said county, September 30th, A. D. 1865.

[SEAL.] D. H. LE SUER, *Clerk.*

Indorsed: Filed Oct. 3d, 1865.

WH. H. BRADLEY, *Clk.*

64 On this day, to wit, the 4th day of October, A. D. 1865, came said relator, by his attorneys, and filed in said clerk's office his motion to quash return of writ in said entitled cause, which said motion is in words and figures following, to wit:

U. S. C. C., northern district of Ills.

THE U. S., *ex re.* John Weber,
vs.
THE BOARD OF SUPERVISORS OF LEE COUNTY, IOWA. } Mandamus.

Now comes the plaintiff, and moves the court to quash the return to the alternative writ, for the following causes:

1. The said return sets up in bar of the writ an injunction issued by the supreme court of Iowa, which was pleaded in bar of the action on which the relator's judgment was rendered, which plea was overruled by this court; as the injunction was held to be no bar to the judgment, it is no sufficient return to the writ to enforce the judgment.

2. Because it appears from the writ of injunction set up in the return that the relator was no party to the suit in which it was obtained, and a judgment and injunction by a State court in which the relator was not a party
65 is no bar to the remedy sought in this case; wherefore plaintiff prays that said return may be quashed.

GRANT, *for Plf.*

Indorsed: Filed Oct. 4, 1865.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the fourth day of October, in the adjourned October term of said court, A. D. 1865, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of *of* John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, in the State of Iowa. } Petition for mandamus.

Now comes on to be heard the motion of the relator to quash the return of the defendant to the alternative writ of mandamus herein, and after hearing the arguments of counsel, the court, not being sufficiently advised, takes time to consider.

On the same day, to wit, the fourth day of October, A. D. 1865, came said parties, by their attorneys, and filed in said clerk's office their agreement
66 in said entitled cause, which said agreement is in words and figures following, to wit:

U. S. C. C., northern district of Illinois.

THE U. S., *ex re.* John Weber,
v.
THE BOARD OF SUPERVISORS OF LEE COUNTY, IOWA. } Mandamus.

The writ of injunction set up in the defendant's return not having set out the names of all the parties to that proceeding in full, it is agreed that the relator, John Weber, was not a party to the suit on which said writ was allowed. Oct. 4, 1864.

J. C. HALL, *for Def't.*
GRANT, *for Plf.*

Indorsed: Filed Oct. 4th, 1865.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the fifth day of October, in the adjourned October term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause.

THE UNITED STATES OF AMERICA, at the relation of John Weber,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY OF LEE, in the State of Iowa. } Petition for mandamus.

67 The court having considered, and being now fully advised upon the motion of the relator, heretofore filed, to quash the return of the defendant to the alternative writ of mandamus herein, overrules said motion, and the rule for a peremptory writ of mandamus is discharged, and it is thereupon considered by the court that the defendant have and recover of the relator its costs in this behalf to be taxed.

On this day, to wit, the fifth day of October, A. D. 1865, the following exceptions of relator were allowed and made of record, and are in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, October term, 1865.

THE UNITED STATES, on the relation of John Weber,
v.
THE BOARD OF SUPERVISORS OF LEE COUNTY, IOWA. } Information for a writ of mandamus.

Be it remembered that the relator in this cause, John Weber, filed in this court the following information for a writ of mandamus.

(Said information is correctly copied on pages 30 to 40, inclusive, of this record.

WM. H. BRADLEY, *Clerk.*)

68 And thereupon the following writ was issued.

(Which said writ, together with the return thereon, is correctly copied on pages 41 to 52, inclusive, of this record.

WM. H. BRADLEY, *Clerk.*)

And thereafter, on the 3d of October, 1865, the said board of supervisors of Lee county appeared by counsel, and filed the following return.

(Which return or answer of said board of supervisors is correctly copied on pages 53 to 63, inclusive, of this record.

WM. H. BRADLEY, *Clerk.*)

And on the 4th of October, 1865, the counsel for the parties filed the following agreement.

(Which said agreement is correctly copied on page 66 of this record.

WM. H. BRADLEY, *Clerk.*)

And on the 4th of October, 1865, the plaintiff filed the following motion to quash said return.

(Which said motion is correctly copied on pages 64 to 65, inclusive, of this record. WM. H. BRADLEY, *Clerk.*)

And thereupon, on the fourth of October, 1865, at the October term of said court, the motion to quash said return came on to be heard, and was
69 argued by Grant for the relator and Hall for defendants, and the court took said motion under advisement until the 5th of October, 1865, and being then advised in the premises, doth order and adjudge that said motion to quash said return be overruled, and the rule for a peremptory writ of mandamus discharged, and the defendants recover of the relator their costs; to which several opinions of said court in overruling said motion and ordering the said rule to be discharged the plaintiff then and there excepted, and prayed the court to sign and seal this his bill of exceptions, which is accordingly done during the progress of the trial, this 5th of September, 1865.

D. DAVIS. [SEAL.]

THOMAS DRUMMOND. [SEAL.]

It is agreed by the plaintiff and defendants that the clerk, in copying this bill of exceptions, shall set out in full, in the same manner as if here inserted, all the papers above named which are referred to, with the words directing the clerk to insert the same.

GRANT, *for Plf.*

J. C. HALL, *Att'y for Respondents.*

Indorsed: Filed Oct. 5th, 1865.

WM. H. BRADLEY, *Clk.*

70 On this day, to wit, the 5th day of October, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Know all men by these presents that we, James Grant, are held and firmly bound unto the board of supervisors of Lee county, Iowa, in the penal sum of five hundred dollars, to which payment we bind ourselves, and each of us.

Given under our hands and seals this 5th of October, 1865.

The condition of this obligation is this: Whereas the United States, on the relation of John Weber, has sued out of the circuit court of the United States for the northern district of Iowa (Illinois) a writ of error to a certain judgment therein rendered in a certain information for a mandamus, wherein the United States, on the relation of John Weber, is plaintiff, and the board of supervisors of Lee county, Iowa, defendants, to the Supreme Court of the United States: Now, if said John Weber shall duly prosecute his writ to effect and pay all damages and costs if he fails to make his plea good,
71 then this obligation to be void; otherwise in full force.

JAS. GRANT. [SEAL.]

Approved:

D. DAVIS.

Indorsed: Filed Oct. 5, 1865.

WILLIAM H. BRADLEY.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript from the record of all the proceedings which have been had in the cause in said court, wherein the United States, on the relation of John Weber, is plaintiff, and the board of supervisors of the county of Lee, in the State of Iowa, is defendant, as appears from the records of said court remaining in my custody, and that the writ of error and citation issued herein by the plaintiff in error are herewith appended to this transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district, this 17th day of October, A. D. 1865.

[L. S.] WILLIAM H. BRADLEY, *Clerk.*

72 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between the United States of America, at the relation of John Weber, and against the board of supervisors of the county of Lee, in the State of Iowa, a manifest error hath happened, to the great damage of the said relator, John Weber, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that
73 you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the 90th.

[L. S.] WILLIAM H. BRADLEY, *Clerk.*

74 The United States of America to the board of supervisors of Lee county, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the office of the circuit court of the United States for the northern district of Illinois, wherein the United States, on the relation of John Weber, is plaintiff, and you are defendants, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the honorable , one of the justices of said court, this 5th of October, 1865.

D. DAVIS.

Service of this citation is accepted by the defendant, October 5, 1865.

J. C. HALL, *Attorney for Respondents.*

75 Supreme Court of the United States, Dec. term, 1865.

THE U. S., *ex re.* JOHN WEBER, plaintiff in error,
v.
THE BOARD OF SUPERVISORS OF LEE COUNTY, IOWA, defendants in error.

Now comes the plaintiff in error and says, that the court below erred—

1st. In refusing to quash the return to the writ, because the same was insufficient, for two causes: first, the relator was no party to the proceedings in which the injunction referred to in the return was granted; second, because an injunction by a State court is no bar to a writ of mandamus from this court.

2d. The court erred in dismissing the application, because the court was authorized by the laws of Iowa to require the act of levying the taxes to be performed by another person if the defendants were unable to do it.

Wherefore the plaintiff prays that said judgment may be reversed, &c.

GRANT, *for Pl'ff in Error.*

[redacted]

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1865.

THE UNITED STATES, EX REL. JOHN WEBER,
Plaintiff in Error,
vs.
THE BOARD OF SUPERVISORS OF LEE CO., IOWA,
Defendants in Error.

FROM THE NORTHERN DISTRICT OF ILLINOIS.

Statement of the Case by the Plaintiff in Error.

John Weber, of New York, on the 27th of May, 1865, filed his information in this circuit, in which he gave the Court to be informed that on the 5th of October, 1864, he commenced a suit in the Circuit Court for the District of Iowa, against the County of Lee, a municipal corporation of that State, to recover the interest upon certain bonds of the County of Lee, issued for the purpose of building certain railroads in Lee County; that the defendant appeared in that Court, and the judges thereof being interested in the cause, of their motion, and with defendant's consent, transferred the cause to the Northern District of Illinois; that the defendant appeared in this Court; that the action was commenced to recover interest on three classes of bonds, issued by Lee County, payable in twenty years, bearing eight per cent. interest, payable half yearly, for which coupons were attached to the bonds; that these bonds were issued to assist in building

three separate railroads—(a copy of the bonds and the numbers held by the relator is set out in full, dated 1 Jan., 1857); that these bonds were issued in pursuance of a vote of the people on the 10th of September, 1856; that on the 29th January, 1857, the Legislature of Iowa passed an Act, as follows:

"An Act to legalize the issue of county and town corporation bonds in the counties of Lee and Davis.

"SEC. 1. *Be it enacted, &c.*, That all votes taken in the counties of Lee and Davis, or in any city or town in Lee and Davis counties, in the form of a joint or several proposition, whether said counties, city or town will aid in the construction of one or more railroads, specifying the amount to be given to each, as a joint or several proposition, and the subscriptions made by said county, city or town, and the bonds of said county, city or town issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and valid; and that all bonds issued in pursuance of such votes and subscriptions, shall be a valid lien upon the taxable property of said county, city or town.

"SEC. 2. That the County Judge, City Council or the proper authority of said county, city or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds; and said counties, city or town shall not be allowed to plead, in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular or invalid, in consequence of the informalities covered by this act.

"SEC. 3. That all bonds heretofore issued by Lee and Davis counties for subscriptions to said roads, in pursuance of any vote by the people of said county, city or town, heretofore had, shall be valid and of full, legal and binding force and effect, notwithstanding any informality or irregularity in the submission of the question to a vote of the people, or taking of the vote author-

izing the subscription to said railroads, and the issuing of such bonds."

That the County of Lee, in said action of Weber, appeared in this Court and filed a plea, in substance, "That certain parties, on the 15th of October, 1856, filed a petition in the District Court of Lee County, Iowa, for the purpose of testing the constitutional and legal power of Lee County to issue said bonds; that said cause was decided in the Iowa Supreme Court, and reported in vol. 3 of Iowa Reports, page 31; that on the 29th of January, 1857, the Legislature passed the above named act; that soon after the same, parties filed their petition in the same Court, claiming that said law was unconstitutional; that the petition was demurred to, tried below, appealed to the Supreme Court and decided by that Court, and reported in 6 Iowa, pages 304 and 391; that this cause was carried to the United States Supreme Court, and dismissed for the want of jurisdiction; that on 28th July, 1860, the same parties filed in the Lee District Court, their petition asking a review of the decisions of the Supreme Court in the other cases, and raising the same questions, constitutional and statute; that this cause was tried below, appealed and decided, and reported in 14 Iowa, page 107—enjoining and restraining the County of Lee from levying and collecting any taxes to pay said bonds or interest, and that this last judgment of the Iowa Supreme Court was a bar to the relator's suit."

That the answer did not aver what the decisions in 3 Iowa and 6 Iowa Reports were, but referred to the same, and by them it appeared that the Supreme Court held, in 3 Iowa, that the vote of Sept. 10, 1856, was irregular, because the proposition to take stock in these roads was made in one proposition, and the right to take stock in each road was made to depend upon a majority for all; and that it appeared that in the cases of 6 Iowa, the Supreme Court held, that the issue of said bonds was author-

ized by the Constitution of Iowa, and that the Legislature of Iowa had the power and authority, under the Constitution, to pass said act of 29th January, 1857.

That the relator demurred to said plea, the demurrer was sustained, and the plaintiff, on the 5th of October, 1864, recovered judgment for interest on said bonds to the amount of $18,207.92.

That said judgment is unsatisfied. The County of Lee has no property subject to execution. That the power to levy and collect the tax named in said act of the Legislature of 29th Jan., 1857, was, by a general law, transferred from the County Judge to the Board of Supervisors of Lee County; that no tax had been levied since 1859; that in addition to said act of '59, the general laws of Iowa required the Supervisors to levy a tax to pay said judgment; that the relator had demanded a levy of a tax to pay said judgment, by the Board of Supervisors, and they have neglected it; and that the valuation of said county for taxes was at least four millions of dollars.

The relator prayed for a mandamus, under said act, to compel the levy of a tax to pay said judgment, interest and costs.

An alternative writ was issued, served and the defendants made a return, in substance:

"That the said Supreme Court of Iowa, at their June Term, 1863, had issued an injunction, which had been duly served, restraining the levy of any tax to pay said bonds, and declaring them null and void."

The record of this injunction was fully set forth, and it appeared therein that the decree was made by the consent of the defendants.

An agreement was filed in this cause, which admitted that the relator was no party to the proceedings under which this decree was obtained.

The relator moved to quash this return for two causes:

1. Because the defendants had pleaded the same decree in bar of the action, and it was decided against them; and if no bar to

the suit, it was none to the execution of the judgment.

2. That an injunction issued in a cause to which the relator was no party, was no bar to the writ of mandamus in this cause.

The Court overruled the motion to quash the return, and dismissed the complainant.

To this the relator excepted, and the whole case is set out in the bill of exceptions.

Argument for the Plaintiff in Error.

The relator assigns for error in this Court, that the Court below erred

1. In overruling his motion to quash the return because it was insufficient.

2. In dismissing the information.

Before we proceed to discuss the question under consideration, it is not improper to revert to the decisions of the Supreme Court of Iowa—from which State this suit originates—in relation to these bonds, on which this judgment was recovered. The defendants brought all these cases prominently before the Court in their answer to the original action, and we, perhaps, will be excused for continuing what the defendants commenced.

In the case of McMillan vs. Boyles, 3 Iowa, 31, decided at the December Term, 1857, the Supreme Court held, "That the vote on these bonds was invalid, because the County Judge submitted the question of aiding three roads to one vote, and made the success of one dependent on the success of all."

Immediately after this decision, the Legislature, on the 29th of January, 1857, passed the act referred to in the information, to legalize the issue of these bonds under the election held in September, 1856. Then the second suits were brought, by the same plaintiffs, referred to in the defendant's answer to the original suit, which are reported in 6 Iowa, 304–391. There are two

cases—McMillan *et al.* vs. Boyles, 304, and McMillan *et al.* vs. The County Judge and Treasurer, 391.

In the case 311, Woodward, J., delivered the opinion of the Court. He says, page 330: "The argument of the appellants strikes at the fundamental, constitutional power of the Legislature to confer authority upon the counties to subscribe to railway companies and other improvements. We understand this question to have been settled in the case of Clapp vs. Cedar County, 5 Iowa, 15: 'The power having been conferred, can the General Assembly cure any defects in the exercise of it? Upon this question we cannot entertain a doubt.'"

In the case on page 391, Wright, Ch. J., delivered the opinion of the Court. He says: "The power of a county to take stock in a company organized for the purpose of constructing a railroad through the same, has been recognized in the following cases: Dubuque Co. vs. Dubuque & P. R. R., 4 Greene, 1; Leech vs. Bissell, 4 Greene, 328; Clapp vs. Cedar County, 5 Iowa, 15; Ring vs. Johnson County, 6 Iowa, 215;—while I have never concurred in this ruling, and still deny the power, yet it may now, as I suppose, be regarded as settled. It seems to me very clear, that if the Legislature can authorize the act, it can certainly legalize and cure any irregularity or defect in taking the vote."

These decisions were published in 1858. After these causes were ended by the final decision of the Supreme Court, and the bonds issued and in the hands of holders, who bought them on the faith of these decisions, the same plaintiffs filed in the *District* Court of Lee County a bill to review the decision of the *Supreme* Court of Iowa; and the Supreme Court, in 1862, McMillen *et al.* vs. Boyles *et al.*, 14 Iowa, 107, reverse the *pro forma* decision of the District Court, and on the authority of the B. & M. R. Co. vs. Wapello, 13 Iowa, 388 (which this Court has overruled), held these bonds unconstitutional, after they had been in the hands of *bona fide* holders for four years, on the faith of a

special judgment in their favor; and they made this decision when the holders of these bonds were not before them; and now, to cap the climax of this legal monstrosity, the Circuit Court of Illinois holds that they will not enforce the payment of these bonds because the Iowa Supreme Court may, by some chance, continue their folly and disobey the decisions of this Court.

The power of the United States Circuit Court to issue writs of mandamus, in such cases, has thus far been held to arise out of, and to be auxiliary to, the judgment itself. In McLung vs. Silliman, 6 Wheaton, 598, the Supreme Court held: "The 14 Section of the Act of 1789, could only have intended to vest the power now contended for, in cases where the jurisdiction already existed, and not where it is to be created or acquired by means of the writ itself."

In Wayman vs. Southard, 10 Wheaton, 23, the Court, in commenting on the powers conferred by the Judiciary Act of '89, as to process, says:

"There is no reason for supposing that the general term writs, is restricted by the words, 'which may be necessary for the exercise of their respective jurisdictions,' to original process, or to process anterior to judgments. The jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment is satisfied."

In Knox County vs. Aspinwall, 24 Howard, 376, this question of jurisdiction was discussed by counsel and the Court. The Court says:

"The act provides a special fund for the payment of these obligations, on the faith of which they were negotiated. It is especially incorporated into the contract, that this corporation shall assess a tax for the special purpose of paying the interest on these bonds. If the commissioners neglect or refuse to perform this duty, the only remedy which the injured party can have for such refusal, is the writ of mandamus.

"By common law, the writ of mandamus is a prerogative and supervisory writ. The Court of the United States cannot issue this as a supervisory writ; they can derive it only from the constitution and laws of the United States.

"The jurisdiction of the Court to give this judgment is not disputed; nor can it be denied that by the constitution Congress has the power to make any necessary laws for carrying into execution all its judgments. It is necessary to exercise this jurisdiction, that the Court have authority to compel the observance of a ministerial duty, by the corporation, which they are bound to perform, which alone gives the plaintiff the remedy needed. The fund, by the face of the contract, is a special tax to be laid and collected. There is no other writ which can give the remedy, except mandamus."

It is argued in the strength of two cases in the State Courts that a mandamus is a discretionary writ, which the Court will refuse, when it will subject the defendants to attachment from another Court.

One of these cases is *ex parte* Fleming, 4 Hill, 581, where Cowan, sitting as a single judge, at special sessions, refused to grant a writ of mandamus to compel the issue of a warrant to commit the defendant, against a writ of injunction issued by a judge of the Federal Court. The judge assigns as a reason for refusing the writ, "Besides, the writ of mandamus is a prerogative writ, which we have power to issue or withhold at our discretion."

This is not true as to the writ of mandamus, even in England. It is sometimes called a prerogative writ, but incorrectly:

"The writ of mandamus owes its origin to that clause of Magna Charta which declares, 'To no one will we deny or defer justice or right.' It is therefore used on *all* occasions where the prosecutor has been deprived of some right for which there is no specific or adequate legal remedy." Tapping, pages 2 and 5.

It is called a high prerogative writ, and not a writ of right; but note *a* to 5 page, Tapping says:—A prerogative writ means either a writ which firstly issues only from the king himself, where he is supposed to preside in person, and not from his other courts; or, secondly, a writ of grace and favor, and not a writ of right. This latter definition cannot apply to a writ secured by Magna Charta.

The other case is the Ohio & Indiana R. R. Co. vs. Commissioner of Wyandott County, Ohio, 7 Ohio State, 278, where the Supreme Court of Ohio refused to issue a writ of mandamus to compel a subscription of stock to a railroad corporation, because the *same* Court had issued an injunction against the subscription. The Court says, "It would be inconsistent with the former act of the Court to do so." This is simply absurd; if the injunction was erroneously issued, the Court had power to refuse an attachment after a mandamus. If the injunction was binding on the plaintiff, by reason of the Court's being concluded, by a former judgment, that judgment was a bar to the writ of mandamus.

Both these cases were between the *same parties*, and in one case, in the same Court.

The Supreme Court, in Kentucky vs. Dennison, 24 Howard, 97, says:

"The right to the writ of mandamus, and the power to use it, has ceased to depend upon prerogative power, and it is now regarded as an ordinary process in cases to which it applies." "It is nothing more than the ordinary process of a court of justice, to which *every one* is entitled, where it is the appropriate process for asserting the right which he claims."

In Kendall vs. the United States, 12 Peters, 614, the Court says: "The right claimed is just, and established by law; the duty required to be performed is clear and specific, and there is no other adequate remedy."

There is another consideration to be taken in this case: The injunction by the State Court is no bar to the remedy in the Federal Court, though issued before suit brought by the plaintiff; it would not be a bar in the State Courts.

In Winston vs. Westfeldt, 22 Ala., 760, it was held, "The doctrine of *lis pendens* does not apply to negotiable paper. An injunction in force against the negotiation of a note, does not destroy its negotiability. An endorsee, who acquires a negotiable note, before maturity, *bona fide*, and for a valuable consideration, without notice, is not bound by a decree in chancery, to which his endorser was a party, although he acquired the note after the rendition of the decree."

To the same effect are

Howe vs. Hartross, 11 Ohio State, 446.

2 John's C. R., 444.

An absolute discharge of a debt, under State insolvent laws though binding on citizens of the same State, is no bar to an action by a non-resident, in the Federal Courts, for the debt so discharged.

Ogden vs. Saunders, 12 Wheaton, 255.

5 Mass., 511.

10 do., 337, 340.

8 Pickering, 294.

If an injunction is no bar to a suit, how can it be to a mandamus to enforce the execution of a judgment? If the Circuit Court has jurisdiction to maintain the action and give judgment, "it is not exhausted by the rendition of the judgment, but continues until the judgment is satisfied."

It is argued, that where the State Court has concurrent jurisdiction of the *subject matter*, and once obtains it, its jurisdiction is conclusive of the Federal Courts, and its decisions binding on the Federal Courts. This statement of the law refers to the concurrent jurisdiction of law and equity courts; with that qualifi-

cation, and the addition of the word "parties" to "subject matter," it is correct; but if by it is meant that where a State Court has jurisdiction of the subject matter, and not of the parties, its judgment is binding on those not within its jurisdiction, or subject to its process, there is no truth nor reason in the proposition.

In the case of Smith vs. McIver, 9 Wheaton, 532, where the Supreme Court uses the language as to concurrent jurisdiction, the cause was between the same parties, first at law and then in equity, in the Circuit Court of the United States for the State of Tennessee.

In the case of Shelby vs. Bacon, 10 Howard, 56, the Court held, that a "plea to the jurisdiction, to be effectual, must show that the Court had jurisdiction as to the whole matter." Page 69. They say, page 68, "There is no principle better settled, than that where two or more tribunals have a concurrent jurisdiction over the same subject matter, and *the parties*, a suit commenced in any one of them may be pleaded in abatement to an action for the same cause in another." And the question we are now to consider is, whether the procedure in the Court of Common Pleas, which had taken jurisdiction of the subject *matter* of the suit, "under the special acts of the State of Pennsylvania, abates the suit of the plaintiff."

"If the plea had been perfect, it would not follow that the complainant could not invoke the jurisdiction of the" (Federal) "Circuit Court. He, being a non-resident, has his option to bring his suit in that Court, unless he has submitted, or is made a party in some form, to the special jurisdiction of the Court of Common Pleas. It appears, from the bill, that the assignees have refused to allow the claim of the plaintiff, or any part of it. To establish this claim as against the assignees, the complainant has a right to sue in the Circuit Court, which was established chiefly for the benefit of non-residents. Not that the claim

should thus be established by any novel principle of law or equity, but that his rights might be investigated free from any supposed local prejudice, as unconstitutional legislation. On the most liberal construction favorable to the exercise of the special jurisdiction, the rights of the plaintiff, in this respect, could not against his consent be drawn into it." Page 70 and 71.

The words "and the parties," a very material qualification of the "subject manner," are omitted in the reporter's head note of this case.

The effect, which the defendants seek to produce by their answer, is that this Court has less authority over the cause now than it had before the judgment was obtained.

In Bradley vs. Snyder, 14 Illinois, 253, the plaintiff filed a bill in equity to redeem from a mortgage, under which the mortgagee had brought a bill of foreclosure against the mortgagor only, viz: The assignee of the equity of redemption not being a party. The applicant insisted that he could redeem from the judgment sale, which was less than the mortgage debt. The Court held, page 266, that the application was to redeem from the mortgage, and not from the sale under the mortgage. They are bound by the mortgage and not by the sale, to which they were strangers, by reason of their not having been made parties to the proceedings of foreclosure.

The second section of the sixth article of the constitution of the United States provides that this constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, and the judges in each State shall be bound thereby, anything in the constitution and laws of said State to the contrary notwithstanding.

In a case where the Federal Courts have jurisdiction, as that of a non-resident, the State Courts can do no act to impair the power of the Federal Courts to give him complete justice. This injunction is not binding on the plaintiff; he was no party there-

to; he has never been heard; to him and to this Court it is the same thing as if it had never been granted; to him it is a nullity. When this Court adjudicates his rights under a contract of this Court, it will not be presumed that the State Court, being an inferior tribunal in that respect, will undertake to punish parties bound by the orders of this Court. In a case of this kind, the State Courts are bound to obey the adjudications of the Federal Courts.

The whole subject matter, not only of the plaintiff's debt, but the remedy for collecting it, is properly before the Federal Court and no State Court can interfere to prevent it.

In Curran vs. State of Arkansas, 15 Howard, 319, where the State of Arkansas withdrew the assets of the State Bank, when it was insolvent, the Supreme Court held that "it impaired the obligation of the contract. True, it does not touch the right of action against the bank. It only withdraws the real property from the reach of legal process, and thus affects the remedy. But it by no means follows, because a law affects the remedy only, that it does not impair the obligation of the contract. The obligation of a contract, in the sense in which the words are used in the constitution, is the duty of performing it, which is recognized and enforced by the laws. And if the law is so changed, that the means of legally enforcing this duty are materially impaired, the obligation of the contract is no longer the same."

"The laws," and judicial interpretations of them "in operation at the time the contract is made, enter into, and form part of the contract; and a subsequent repeal of such laws, will not affect the rights and liabilities of the parties, as thereby originally fixed and determined."

Mathias vs. Cook, 31 Illinois, 83.

In construing the constitution of a State, "this Court will adopt a settled construction, existing, when the contract was made, acquiesced in by all branches of the government, and under auth-

ority of which the contract was entered into and reject a more recent one to the contrary."

State Bank of Ohio vs. Knoop, 16 Howard, 369.

The same principle, as to State Court interpretations of State Constitutions, which impair the obligation of contracts was held by this Court, in Jefferson Branch Bank vs. Skelly, 1 Black, 436.

The decision of the Iowa Courts is based upon the principle that the Constitution of Iowa did not authorize the issue of these bonds. In several cases before the Supreme Court of the United States, this decision has been reversed upon the principle, that the State Courts having first interpreted the State Constitution to authorize the issue of such bonds, any subsequent interpretation impaired the obligation of the contract.

Gelpcke vs. Dubuque, 1 Wallace, 175.

do. 220, 221.

Meyer vs. Muscatine, 1 Wallace, 384.

In the Union Bank of Tennessee vs. Jolly, 18 Howard, 331, this Court held, that the laws of a State limiting the remedies of its citizens in its own Courts, cannot be applied to prevent the citizens of other States from suing in the Courts of the United States in that State, for the recovery of any property or money to which they may be legally entitled. This principle was fully decided in Suydam vs. Brodnax, 14 Peters, 67.

In the case of Suydam vs. Brodnax, the Legislature of Alabama passed a law, which is certainly of as much validity as the interpretation of a law, prohibiting creditors, in certain cases, from bringing suits where debtors were dead and insolvent. This law was held to be unconstitutional.

In Dodge vs. Wolsey, 18 Howard, 331, this Court fully reviewed the objects of its creation, and its appellate power over the decision of State Courts and State laws in conflict with the constitution. On page 351: "We will now give two illustrations, one from the constitution and one from a case decided by

this Court upon a tax act of the State of Ohio, to show how the framers of the constitution, and the conventions which ratified it, were fully aware of the necessity, and meant to made a department of it, to which was to be confided the final decision, judicially, of the powers of that instrument, the conformity of the laws with it, which either Congress or the States might enact, and to review the judgments of the State Courts in which a right is decided against, which is claimed in virtue of the constitution and laws of Congress." The Court puts the case of a tax by Congress, and the application by a citizen to a State Court for an injunction by them against the collection of a tax; and the case of the State Bank tax decided in 16 Howard.

In Hyde vs. Stone, 20 Howard, 177, a case was transferred, under insolvent laws, from the Federal to the State Courts.

This Court held, "that the jurisdiction of the Courts of the United States cannot be impaired by the laws of the States, which prescribe the modes of redress in their Courts, or which regulate the distribution of their judicial power. The Courts of the United States are bound to proceed to judgments, and afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty, in any case, in favor of another jurisdiction."

The right to have these taxes levied was a part of the contract. "The act provides a fund for the payment of these debts, on the faith of which they were negotiated. It was especially incorporated into the contract that this corporation shall assess a tax for the special purpose of paying the interest on these bonds. The fund to pay this judgment, by the face of the contract, is a special tax to be levied."

24 Howard, 384, 385.

"No State can control the exercise of any authority under the Federal Government."

It has been adjudged that no State Court has any authority or jurisdiction to enjoin a judgment of the Circuit Court of the

United States, or to stay proceedings under it. This was attempted by a State Court in Kentucky, and declared to be of no validity, by the Supreme Court of the United States, in McKim vs. Voorhies, 7 Cranch, 279. No State tribunal can interrupt, by process of replevin, injunction, or otherwise, the exercise of the authority of the Federal officers, and any intervention of State authority, for that purpose, is unlawful. This was so declared by the Supreme Court in Slocum vs. Mayberry, 2 Wheaton, 1.

1 Kent, 451, top, 8th edition.

"Any restraint by State authority or State officers in the execution of the process of the Federal Courts, is altogether inoperative upon the officers of the United States in the execution of mandates which issue to them."

Baldwin, J., McNutt vs. Bland, 2 Howard, 17.

McClung vs. Silliman, 6 Wheaton, 598.

"A State Court cannot enjoin the proceedings of a Federal Court, nor can a Court of co-ordinate jurisdiction restrain the proceedings of another Court of the same jurisdiction."

Phelan vs. Smith, 8 Cal., 521.

Ricketts and wife vs. Johnson, 8 id., 34.

"State Courts cannot be permitted to restrain process of Federal Courts, by injunction or otherwise."

Duncan vs. Darst, 1 Howard, 306.

The same principle is held, in a case of much more importance, in this Court: Ableman and U. S. vs. Booth, 21 Howard, 506.

"The sphere of action appropriated to the United States Court is as far beyond the reach of judicial process issued by a State judge or a State Court, as if the line of division was traced by landmarks and monuments visible to the eye." Page 516.

If the Federal Court has jurisdiction to give this judgment, it has jurisdiction to enforce it, and no act of a State Court can arrest the exercise of it.

Any action of a State Court which prohibits the levying of this tax, impairs the obligation of the contract, and is null and void.

Three things must be borne in mind in this case, in order to arrive at correct results: *First*—That the relator is not asking for a mandamus, as an original remedy, simply in his character of holder of the bonds, but that, having recovered judgment in this Court, on the bonds, he asks a mandamus to compel payment of *that judgment*, as such. *Second*—That the grounds on which the injunction was granted by the State Court, relate *solely to the validity of the bonds*, and *not* to the propriety of levying a tax to pay them, *independent* of the question of their validity. (14 Iowa, 107.) The questions, whether the relator is entitled to recover on his bonds, and whether he is entitled to have a tax levied (as prayed for) to pay them, are in reality *one and the same*, dependent on the same considerations, and have been so always treated by the State Courts. The provision for levying the tax is incorporated into the same law sanctioning the issue of the bonds, and constitutes a vital part of the contract with the bond-holders. The whole must stand or fall together; and it has never been pretended otherwise in any case or Court. *Third*—The injunction, on its face, purports to restrain the county officers only from levying a tax to pay the *interest on the bonds*, as such, merely; and the bond-holders were not parties to the suit.

Now, it clearly was beyond the power of the State Court, or any Court, to settle the question of the validity of the bonds, so as to conclude the bond-holders *for any* purpose, without making them parties. This is on the general principle that judgments bind only parties and privies. The only exception to this is in case of proceedings *in rem*. It will hardly be claimed that an injunction-suit is a proceeding *in rem*, or that the right or power of county officers to levy a tax is a "*res*" which can be proceeded

against directly, and *condemned*, in the absence of the *persons* interested therein. This of itself is an answer to the position that the State Court *first* acquired jurisdiction of the matter by the injunction suit. It acquired jurisdiction of it only as between the *parties* before it, and its decree (not being one operating *in rem*) had no force or virtue whatever against the parties *not* before it. In Bowen vs. The Irish Presbyterian Congregation, 6 Bosworth (N. Y. Superior Court), it was held, in an action against the trustees of a religious corporation to compel the specific performance of their sale of real estate, duly authorized by an order of the Supreme Court, obtained on the petition of the corporation, that it was no defense that in a suit subsequent to the contract brought in that Court by members of the congregation against such trustees, an injunction had been issued restraining the corporation from conveying;—the plaintiffs in the former suit not being parties to the latter—that the judgment in the injunction-suit did not bind the plaintiffs in the suit for specific performance, and could not be given in evidence against them.

"The Court must have jurisdiction of both the persons of the parties and of the subject matter of litigation, before it can render a binding judgment or decree."

Johnson vs. Johnson, 30 Ill., 215.

The State Court itself would not treat the injunction decree as *any bar* to a proceeding by a bond-holder *in that* Court to enforce his rights against the county. It might, indeed, decide against him, on the same grounds in which it decided the injunction suit. But it would decide the question, as to the bondholder, as *res nova*, and not as *res adjudicata*. And on the same principle, inasmuch as the Federal Court has concurrent jurisdiction with the State Courts, of suits on these bonds, and the judgments of the Federal Court are entitled to full faith and credit in the State Courts, if a bondholder recovers judgment in the former Court, and then sues on his judgment in the latter,

the State Court cannot go behind the judgment and inquire into the merits of the original cause of action, but must give full effect to the Federal judgment, although it may be of opinion that it is erroneous. And having thus rendered a judgment in his favor, which establishes the validity of the bonds sued on, it cannot afterwards *rightfully* deny him a *mandamus* to enforce payment by the levy of a tax, upon grounds which, denying the validity of the bonds, necessarily directly contradict the judgment, nor on the strength of a previous *injunction* granted upon those grounds, he not being a *party* to the suit; and the Court therefore having *no power then* to decide *against* him, what has been *since* decided *in his favor.*

If these views are sound, (and we do not see how any one position thereof can be controverted) it follows, that the *utmost possible* effect that can or ought to be given to an injunction of such character, and obtained under such circumstances, as the one now in question, even in the Court which granted it, is to hold it operative to restrain the levy of a tax to pay the interest on the bonds, *generally*, as such, to *all* the bondholders indiscriminately, or to pay any *particular* bondholder, until he shall here vindicate his right so to be paid by proper proceedings, in some Court of competent jurisdiction. We say that, as a question of *construction*, the State Court ought not to be regarded as having *intended* to decree more than this, nor as having undertaken, in disregard of all law and justice, to settle finally the questions at issue, as against parties not one of whom was before; *still less*, as having assumed, in effect, to enjoin the payment of *judgments* of the Federal Court, on the ground of error in their rendition.

For the Court cannot hold this injunction a defense to the present application, without holding that by its true construction, it operates to restrain the levy of any tax to pay *the judgment* which the relator has recovered in this Court on the bonds, just as fully as though that judgment were set out *in haec verba*

in the decree. And we say that thus viewed, to that extent it is a clear *act of usurpation*, and that no respect or obedience whatever is due to it. The State Courts have no jurisdiction to review the judgments of this Court; and what they cannot do *directly*, they cannot do *indirectly*, by undertaking to interfere with the proper process for executing them, whether execution, *mandamus*, or otherwise, on the grounds of the invalidity of the causes of action on which they were recurred. Suppose that, after the rendition of a judgment against a county, in this Court, the State Court should undertake to enjoin the county officers from paying it, or from taking steps to raise means to pay it, on the ground that it was erroneously rendered; would this Court pay any respect to such an injunction? The proposition is too monstrous for refutation. And if the State Court has undertaken on similar grounds, to enjoin the enforcement of judgments, in this or any Court of competent jurisdiction, *in advance* of their recovery, and without having the parties interested before it, the attempt is equally futile. The difference of opinion which prevails in the State and Federal Courts as to the validity of these bonds, is doubtless matter of regret. But if the State Courts do not choose to follow the decisions of the Federal Courts, they must at least be content with giving effect to their own views of the law, as against parties who choose to come, or are by proper process, brought, before them; leaving the Federal Courts to do the same. They must not attempt practically to usurp an *exclusive*, when the law has given them only a *concurrent* jurisdiction, by not only denying the bondholders any remedy at their own hands, but also undertaking to enjoin the collection of any Judgments which they may obtain in another equally competent tribunal, constituted under another Superior Sovereignty.

If the Court below had felt itself embarrassed simply by the mere form of an injunction it had perfect power, under the laws

of Iowa—regulating the writ of *mandamus*—to order some other officer to levy and collect this tax.

The Code of 1860, § 3770, provides—"The Court may direct the act to be done by the defendant or some other person, appointed by the Court."

It was said, in the oral opinion of the Court below, that a writ of mandamus was a discretionary writ. This Court, in Kentucky vs. Dennison, 24 Howard, 97, and 12 Peters, 614, has said that it is not. In the case at bar, if this be a discretionary writ, then execution after judgment is a discretionary writ; for the injunction of the State Court is against the payment of the debt. It is just as much a contempt of the injunction to pay the debt as to levy a tax to pay it. The Court below might just as well hold that no execution should issue, as that no mandamus should issue.

It was also said, that our remedy was with the State Court. We should be glad to discover some process of reasoning by which we could get into the State Court in the case pleaded; though the constitution says, that if the relator was put there without his consent, he could force the State tribunal to transfer his case to the Federal Courts.

The relator is no party to the proceedings in the State Court. If he were to do what was done by the plaintiffs and defendants, file a bill, by agreement, in the State *District* Court. to review the decision of the *Supreme* Court, neither the adverse parties nor the Court would be willing to open the door; it would be a clear case of *non omnibus dormio.*

We submit, that all or any reasoning which holds that the writ of mandamus cannot issue because it will subject the defendants to an attachment from the State Court, is based on false premises.

It assumes that a mandamus, in this Court, is a writ of discretion, and not of right, and that an inferior Court will disobey

and annul, by its injunction, the decision of a superior Court, when it cannot do the same thing by direct action.

It pays no respect to the knowledge of constitutional law by the State Court, that any process or judgment of that Court, which conflicts with a judgment of the Federal Court, where the latter has jurisdiction, is null and void. When a case is decided in the Federal Court, between citizens of different States, the State Courts are bound by that decision, though they may have decided differently on the same subject between citizens of their own State. It is not good logic to argue that the State Court will pay no respect to the judgment of the Federal Court and disobey it. On the contrary, the State Court will be presumed to do its duty. If it were otherwise, in all cases of Federal jurisdiction the defendant, by agreeing to a judgment at the suit of another party against him, in the State Court, can evade the effect of a Federal Court judgment.

The argument on which the Court below proceeded, assumes that an injunction in favor of the tax payers against the county officers, is to be enforced against the county officers, against all other parties. In other words, though a judgment is binding, and to be enforced only between the parties, an injunction on that judgment is binding on and to be enforced against strangers to it.

This is not true. If A. sues B. on his note, and gets an injunction against paying it, as between A. and B., that injunction is binding between the parties. But suppose C. sues A. on the same note, in the same or another Court, and gets judgment that B. pays that note. Does anybody suppose that an attachment could issue on the injunction in the first case for paying the judgment in the latter? In the case at bar, the injunction relates only to the parties to the suit, as between them. It is no contempt of the Court to levy the tax to pay the judgment of the relator, because in another suit the defendant is enjoined by

another plaintiff; and if the plaintiff in that suit were to apply to the State Court for a disobedience of the injunction to levy the tax, the defendant could well answer that he had been commanded to levy it by a Court of concurrent but superior jurisdiction, at the suit of another party, who was not concluded by the judgment in the State Court.

J. GRANT,
For the Plaintiff in Error.